**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**F.A.O. NO. 536 OF 1989**
**DATE OF DECISION:01.08.2006**

**SMT. SHASHI SOOD W/O HARI LAL SOOD**

**....APPELLANT**

**VERSUS**

**KULDIP SINGH AND OTHERS**

**....RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL**

**PRESENT: MR. V.K. KATARIA, ADVOCATE**
**FOR THE APPELLANT**

**MR. MUNISHWAR PURI, ADVOCATE**
**FOR RESPONDENT NO. 3**

**JUDGEMENT**

This order will dispose of four appeals bearing FAO Nos. 536 to 539 of 1989. The claimants are family members consisting of husband, wife and two minor children. All of them suffered injuries on account of an accident with a Truck bearing No. PUQ-4721. The accident in the present case occurred on 13.10.1985 at 4.15 P.M. on the G.T. Road near petrol pump known as Indra Filling Station involving car bearing No. PBP-8600 with a truck bearing No. PUQ- 4721.

As far as the issue of rash and negligent driving is concerned, the same was decided in favour of the claimants-appellants and against the respondents.

As a result of the accident right leg of one of the claimants, namely Shashi Sood was broken, besides sustaining small injuries on other part of the body. It has come in the evidence that she remained in hospital and nail had been fixed in her right leg. Considering the evidence on record, she was awarded compensation of Rs. 20,000/- alongwith interest @ 12 % per annum from the date of application i.e. 10.4.1986 till amount is paid.

Deepak Sood, who was a minor aged about 12 years at the

relevant time, suffered injuries on his left eye, which resulted in total loss of vision. He remained admitted in hospital. He was awarded compensation of Rs. 10,000/- for pain and sufferings, Rs. 50,000/- for loss of left eye and disfiguration and Rs. 10,000/- for the loss of education standard and adding to this a sum of Rs. 5,000/- as special damages for the cost of treatment, in total a sum of Rs. 75,000/- alongwith interest @ 12 % per annum.

As far as Ms. Anu Sood, minor is concerned, she suffered injuries on her forehead, resulting into stitches and also on left hand. She also remained hospitalised. She was awarded a sum of Rs. 10,000/- alongwith interest @ 12 % per annum.

As far as Hari Lal Sood is concerned, his right hip bone was dislocated besides other minor injuries on the other parts of the body for which he was operated upon. He remained in hospital for about 10 days. Accordingly, he was awarded a sum of Rs. 40,000/- by way of compensation alongwith interest @ 12 % per annum. This amount was inclusive of further operation to be carried out as was deposed in the medical evidence.

After determination on the quantum of compensation to be granted to all the claimants, the next question which was examined by the Tribunal, was as to who was liable to pay the compensation. The claim of the owner of the vehicle was that there was a policy of insurance in respect of the truck, operative at the time of accident, accordingly, the insurance company would be liable. However, plea of the insurance company was that the truck was not insured at the relevant time as the cheque for a sum of Rs. 264/- issued by the insured through the agent of the company on 12.10.1985 was not encashed by the company as the same was post-dated bearing the date as 12.10.1986. As the company had not received any premium for the policy, the same was not a valid policy. Cover note having been issued without any consideration as such is a void document flowing no benefit to the beneficiary thereof.

Counsel for the appellant-claimants has referred to the evidence on record and argued that it is not disputed that at the time of accident valid cover note issued by the company was operative. Admitted case of the

parties was that the insured had in fact issued a cheque for the insurance of the vehicle. However, to controvert this plea, the contention of counsel for the insurance company is that after the documents were presented in the office, it was immediately noticed that the cheuqe issued by the insured was post-dated to the extent that year was mentioned as 1986 instead of 1985 though the date was correct. Accordingly, the insured was immediately informed vide letter dated 12.10.1985 sent through UPC. Thereafter, another letter was sent on 25.1.1986 by registered post. In spite of this the premium was not paid by the insured. Accordingly, the Insurance Company is not liable to indemnify for any claim and damages arising out of the accident.

A perusal of the cover note issued by the agent of the company Ex. R2 shows that the same was issued on 12.10.1985 at 1.30 P.M.. The letter which is stated to have been written by the insurance company on 12.10.1985 itself and sent by UPC, receipt for which has also been placed on record as Ex. R4, shows that the letter does not mention any despatch/reference number. It seems that the letter was created after the accident had already taken place in the afternoon on 12.10.1985 itself and for that reason so much of details were mentioned in the letter regarding the liability of the insurance company.

As far as the plea of the insurance company to the effect that the cheque issued by the insured was of 1986 instead of 1985 is also not born out from the record as the same has not been placed on record. It is not mentioned in any of the letters that the cheque in question was returned by the insurance company to the insured. It was a vital piece of evidence at least to show that the cheque in question was post-dated or not. It is also not clear as to why the letter dated 12.10.1985 was sent through UPC on the same date even though the letter required an urgent action by the insured whereas the letter dated 25.1.1986 was sent by registered post which also mentioned reference as is usually there in correspondence by the insurance company. In totallity the evidence led by the insurance company does not inspire confidence.

To substantiate his plea that even if the cheque issued by the insured is dishonoured later, still if there was policy on the date of accident

the insurance company will be liable to bear the compensation, the counsel for the appellants-claimants relied upon a judgment of Hon'ble the Supreme Court in **New India Assurance Co. Ltd. vs. Rula and others** AIR 2000 Supreme Court 1082, wherein it was held as under:

> "11. This decision, which is a 3-Judge Bench decision, squarely covers the present case also. The subsequent cancellation of the Insurance Policy in the instant case on the ground that the cheque through which premium was paid was dishonoured, would not affect the rights of the third party which had accrued on the issuance of the Policy on the date on which the accident took place. If, on the date of accident, there was a Policy of Insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of Insurance Policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party."

The counsel for the respondents has not cited any judgment contrary thereto.

Keeping in view the binding precedent referred to above, in the case of Rula and others' (supra), the findings recorded by the Tribunal to the effect that the insurance company is not liable to pay the compensation to the appellants-claimants are reversed and it is held that the insurance company would be liable to satisfy the award.

As far as the amount of compensation is concerned, I do not find much substance in the argument of learned counsel for the appellants-claimants with reference to the award passed by the Tribunal in the case of Mr. Hari Lal Sood, Shashi Sood and Ms. Anu Sood.

However, in the case of Deepak Sood, who suffered loss of vision in left eye in the accident resulting into 40 % disability, the amount

of compensation awarded to him is certainly on a very lower side. It cannot be denied that he was a young boy of 12 years of age at the time of accident, who per force will have to carry on with this deformity throughout his life, will not only result in pain and sufferings to him rather will scuttle his future prospects in life. As a result thereof he will loose number of opportunities in life, which cannot be compensated in terms of money.

The guiding principles for determination of compensation in such like cases have been laid down by Hon'ble the Supreme Court in **Lata Wadhwa vs. State of Bihar** (2001-3) 129 P.L.R. 9 (S.C.) , the relevant passage therefrom is extracted below:

> "In examining the question of damages for personal injury, it is axiomatic that pecuniary and non-pecuniary heads of damages are required to be taken into account. In case of pecuniary damages, loss of earing or earning capacity, medical, hospital and nursing expenses, the loss of matrimonial prospectus, if proved, are required to be considered. In the case of non-pecuniary losses, loss of expectation of life, loss of amenities or capacity for enjoying life, loss of impairment of physiological functions, impairment or loss of anatomical structures or body tissues, pain and suffering and mental suffering are to be considered. But for arriving at a particular figure under each of the aforesaid heads, the claimant is duty-bound to produce relevant materials, on the basis of which a determination would be made, as to what would be the best compensation...."

Reliance is also placed on judgment of the Supreme Court in the case of **R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.** (1995-2) 110 P.L.R. 298 and judgments of this Court in **Inderjit Kaur v. Punjab State,** (1985-1) 87 P.L.R. 521 and **Sawatantra Kumar Lamba v. Mrs. Sheela Didi and others,** (1987-2) 92 P.L.R. 1. and **Rajesh v. Surjeet Singh and others** (2005-2) 140 Punjab Law Reporter 295.

In the case of **Shashendra Lahri v. UNICEF** (1997) 11

S.C.C. 446 where the MACT had awarded to a boy of 17 years a sum of Rs. 58,000/-, Hon'ble the Supreme Court had enhanced the same to Rs. 4 lacs with interest at the rate of 8 %. He was a student of B.Com and suffered bone injuries requiring bone grafting.

In the case of Parvinder Singh (supra), this Court after considering various judgments had awarded a sum of Rs. 4 lacs to a student of Mechanical Engineering who remained as indoor patient for 47 days and the injuries suffered by him were far less serious than those suffered by the injured claimant-appellant. This Court while calculating compensation, observed as under:

> "It is obvious that the award is on the lower side. LA Mechanical Engineer will have to face a lot of pecuniary losses in future, as he would not be in a position to get a good job. His right hand is permanently affected. He cannot write fluently. His grip power is also impaired. He cannot enjoy the amenities of life as his face is disfigured. His power of mastication is also lowered. All these sufferings he will have to undergo throughout his life. So far as future losses are concerned, a multiplier is to be applied. Hence, in my considered view the appellant is entitled to get Rs. 30,000/- for loss of matrimonial prospectus, Rs. 40,000/- for permanent disability, Rs. 50,000/- for special diet, transport, attendant and medical expenses, and Rs. 80,000/- for pain and suffering and loss of amenities of life i.e. in total Rs. 2,00,000/- under the above heads. So far as his future prospects are concerned he is entitled to get a compensation of Rs. 2 lacs. Accordingly, the appeal is allowed and compensation is enhanced to Rs. 4 lacs. The appellant is entitled to recover interests on the amount of Rs. 2 lacs at the rate of 12 per cent per annum awarded under different heads from the date of filing of the claim petition. In so far as the award of Rs. 2 lacs for future

prospectus is concerned, he will not be entitled to charge any interest on it. The appellant shall also be entitled to receive costs."

In Rajesh's case (supra) where the insured was 21 years of age, and suffered 25 % permanent disability, this Court awarded a sum of Rs. 2 lacs on account of permanent disability, Rs. 1 lac for loss of matrimonial prospects and Rs. 1 lac on account of loss of business prospects.

Keeping in view the guiding principles laid down in the above referred judgments, in my opinion the appropriate compensation payable to Sh. Deepak Sood would be Rs. 20,000/- on account of pain and sufferings, Rs. 2 lacs on account of permanent disability of loss of left eye, Rs. 10,000/- on account of expenses incurred for treatment and nursing, Rs. 50,000/- on account of loss of matrimonial prospects and Rs. 50,000/- on account of loss of future prospects including education etc., total being Rs. 3,30,000/-. The amount of compensation shall be payable alongwith interest @ 7.5 % per annum from the date of application i.e. 10.04.1986 till payment.

As is evident, in the present case the plea of limited liability of insurance company was not substantiated as the policy had not come on record. This was for the reason that the insurance company had not admitted its liability. Now since the insurance company has been made liable to pay compensation to the claimants holding that there was valid policy at the time of accident, it would be open to the insurance company to prove the terms of the policy, in any proceedings, if taken out by insurance company against the insured, for recovery of the amount payable in excess of the liability of the insurance company.

The appeals are disposed of in the manner indicated above.

**01.08.2006** **(RAJESH BINDAL)**
**gsv** **JUDGE**